



SENATOR ARLEN SPECTER PENNSYLVANIA

ARLEN SPECTER SPEAKS

February/March
2003

Volume 3

THE SITUATION IN IRAQ

On March 20, 2003, I urged my colleagues in the Senate to support a resolution commending the President and commending our troops, including civilian national security personnel. I believe it is important once the conflict has begun

that there be full support for our troops in the field.

The original resolutions on force were passed by both the Senate and the House of Representatives by overwhelming majorities. I respect those who have disagreed with the action of the Congress and with the action of the President, but once the nation moves forward under our Constitutional process — where as a represented democracy, the Congress voted

and authorized the President as Commander-in-Chief to move ahead — that we support this action.

It is regrettable that there was not a united U.N., because had that been done, I think it might have been possible to knock Saddam Hussein down. Saddam Hussein's international dance and delay was such that he thought he could wear us out. Once the United States had more than 200,000 troops in the field, and where we were con-

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HIGH
HIGH RISK OF
TERRORIST ATTACKS

High Condition (Orange). A High Condition is declared when there is a high risk of terrorist attacks. In addition to the Protective Measures taken in the previous Threat Conditions, Federal departments and agencies should consider the following general measures in addition to the agency-specific Protective Measures that they will develop and implement:

- Coordinating necessary security efforts with Federal, State, and local law enforcement agencies or any National Guard or other appropriate armed forces organizations;
- Taking additional precautions at public events and possibly considering alternative venues or even cancellation;
- Preparing to execute contingency procedures, such as moving to an alternate site or dispersing their workforce; and
- Restricting threatened facility access to essential personnel only.

THE CORRECT STANDARD FOR FOREIGN SURVEILLANCE

In February, as a matter of Senatorial oversight, Senator Leahy, Senator Grassley, and I released a 37-page report that deals with the issue of the FBI's activities under the Foreign Intelligence Surveillance Act (FISA) and the ability of the Federal Bureau of Investigation and the Department of Justice to handle counterterrorism. The report can be found on my office's internet website at specter.senate.gov.

It is my view that there is a critical issue of the FBI's competence to handle terrorism, in light of the clear-cut failures of the FBI prior to 9/11, and the FBI's failure to answer important questions about what the FBI has done to correct the current failures.

The report we released refers to the FBI's handling of the famous Phoenix memorandum. A detailed FBI report that was submitted to

Washington and was lost in the shuffle at FBI headquarters.

Had it been forwarded to the right personnel and understood at FBI headquarters, the Foreign Intelligence Surveillance Act request in the Moussaoui case from the Justice Department's Office of Intelligence Policy and Review would have been handled in a different manner.

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THE SITUATION IN IRAQ (CONTINUED)

**“NOW IS
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strained by weather factors and the ability to protect our personnel from chemical and biological attacks, we simply had to move. Now is the time for unified American action.

This resolution commends Prime Minister Tony Blair and his government. I believe that

the “Coalition of the Willing” will be doing the work really of the entire free world. It is our hope and expectation that the efforts will be swift, and the casualties will be held to a minimum. With success, I would hope that those who have dissented in the United Nations would come forward, because

victory will be ours on the battlefield, but that is not sufficient. Iraq must be rebuilt and our international alliances must be reinstated. But this is the first step, by having a strong unanimous vote, supporting our troops and supporting the action of the United States of America.

FISA (CONTINUED)

In addition there had been information as early as 1996 from a Pakistani named Abdul Hakim Murad, an al-Qaida member, who had plans to fly an airplane into the White House or CIA headquarters.

Had the information on Zacarias Moussaoui been properly handled, it could have led to a FISA search authorization for Moussaoui's computer and the information contained on that computer coupled with other information, 9/11 might well have prevented.

In light of the fact that a warrant was not obtained under the Foreign Intelligence Surveillance Act, Moussaoui, a key participant in the 9/11 planning, developed into a burgeoning, very major case in the United States in the intervening months.

The Zacarias Moussaoui case received national prominence when a conscientious FBI agent named Coleen Rowley wrote a 13-page, single-spaced letter to the FBI Director, which the Judiciary Com-

mittee ultimately saw, and which was the subject of a very important Judiciary Committee hearing last June 6. FBI Agent Rowley was honored on the cover of Time Magazine as one of the persons of the year--three so-called whistleblowers. This is a categorization doesn't sound too complimentary on its face, but it is very important when somebody knows that something wrong is going on within the Government, and has the courage to stand up and expose it and subject himself or herself to retaliation.

In the course of what Agent Rowley wrote to FBI Director Mueller, it was apparent the FBI was applying the wrong standard for a warrant under the Foreign Intelligence Surveillance Act.

The letter from Agent Rowley pointed out that they were being held to a standard of preponderance of the evidence--meaning more likely or more probable than not--meaning 51 percent or more.

In the course of that hearing, I raised with Director Mueller and with Agent Rowley the case of *Illinois v. Gates*, which appears at pages 23-24 of the report that Senators Leahy, Grassley, and I released, which defined probable cause as “circumstances which warrant suspicion” under the “totality of the circumstances analysis.”

This case was decided in 1983 and it referred back to an opinion of Chief Justice Marshall in 1813. So this had been the law for a long time. But at the hearing, Agent Rowley testified that was not the standard that was used. There is a real question which has yet to be answered as to whether FBI Director Mueller knew what the right standard was.

We then proceeded on July 9th to have a closed-door session, where we brought in attorneys and personnel from the FBI who were in charge of handling warrants under the Foreign Intelligence Surveillance Act.

I was absolutely astounded at what I heard. These attorneys did not know the standard either. I was astounded because the June 6 hearings, more than

a month before we had this closed-door session on July 9, were widely publicized.

One would have expected that the agents who deal with the Foreign Intelligence Surveillance Act would be looking at a hearing which was squarely on their subject. Or one would also expect that the Director of the FBI, who was at the hearing, and found that key FBI personnel had applied the wrong standard in the Zacarias Moussaoui case--causing them not to apply for a search warrant--that the FBI Director would take specific steps to see to it that the people in charge of handling those warrant applications would have known what was going on.

From June 6 to July 9 is 33 days. The world could turn in 33 days. People could be doing highly suspicious things, people could be planning terrorist attacks, and no action was taken by the Director of the FBI to see to it that the people who were charged with the responsibility of applying for these warrants did so.

A PROTOCOL TO BRING JUDICIAL NOMINATIONS TO A VOTE

In the Senate for the few-past weeks, a key issue has been the confirmation of Miguel Estrada, a young man who came from Honduras, barely spoke English, has an extraordinary academic record from Columbia and Harvard and a professional record in the Solicitor Generals office

The Constitution provides that the Senate will give advice and consent to the President. The tradition of this country for 215 years has been that the President makes selections as he chooses, and advice can come from the Senate. Consent has been given without challenging the President to a partnership arrangement where the Senate has to consent to the nominee before the President can submit the nominee to the Senate with any chance for confirmation.

What the Democrats are doing here today is really seeking a constitutional revolution. What they want as the minority party in the Senate is a full partnership with the President on selecting Federal judges.

What they are doing with Miguel Estrada, and other nominees who are coming up for an executive session before the Judiciary Committee, is really a prelude to the nomination of the next Justice for the Supreme Court. The effort is being made by the Democrats to have their acceptable ideology without the traditional deference which has been paid to the President.

The Senate has been maneuvered into a position here, an institution with lines being drawn in the sand, and Republicans on one side and Democrats on the other being backed into a corner--sort of a macho-macho game where no one wants to play the chicken game. What we are really seeing is gridlocking this institution on a permanent basis, if no one yields.

So we have a long litany of judges--some of whom have been held up for 2 years--and nothing is going to happen.

What we may be seeing here is the foundation laid for a grand political argument in the Presidential election of 2004. We are laying it right on the

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line. If the American people want judges confirmed, there are going to have to be 60 votes in the President's party.

Both sides have been at fault in the past, in my opinion. When President Clinton was in the White House and the Republicans controlled the Senate, we wouldn't confirm people. There were some breakthroughs but relatively few. When President Bush submit-

ted nominees for 2 years, or a year and 7 months, the Democrats stopped the nomination process.

It is high time we had a protocol which both sides respected wherein so many days after a nomination, there is a hearing, so many days later, a vote in committee, and so many days later, a vote on the full floor.

But we are really heading for extraordinary deadly deadlock in the Senate. I think we ought to recognize it for what it is. There is a Constitutional revolution underway here to change the fundamental way judges are selected.

If the Democrats insist on a full partnership with the President, if any party insists on a full partnership with the President of the opposite party, then it is going to take 60 votes. And we may be setting the stage for 60 votes in the 2004 election.

But it is my hope that cooler heads can prevail and we can sit down and work this out so that when the shoe is on the other foot, we don't have this kind of gridlock. This effort is really to upset longstanding Constitutional principles.

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US SENATE

711 Hart Senate Office

Phone: 202-224-4254

Fax: 202-228-1229

Email:

arlen_specter@specter.senate.gov

As we begin the 108th Congress, I am continuing my tradition of soliciting your view on what should be our priorities in Washington, D.C. It is important for me to know what you believe are the most pressing issues facing our state and nation and how the federal government can solve them. Town Hall Meetings are an important tool for me because they allow me to get out of the beltway and learn a different point of view about our nations priorities.

As your United States Senator, my number one priority is keeping abreast of your needs and concerns, so please try to attend. Together we can achieve a great deal for Pennsylvania and the nation. I look forward to seeing you there.

Currently plans are being worked out for possible Town Meetings in:

- Centre County
- Clearfield, Jefferson and Elk Counties
- Cameron & McKean Counties
- Erie County

Check my website at specter.senate.gov for further updates.



Allentown Office

504 W. Hamilton St.

Suite 201

610-434-1444p

610-434-1844f

Erie Office

6th & State Street

814-453-3010p

814-455-9925f

Harrisburg Office

228 Walnut Street

Suite 1104

717-782-3951p

717-782-4920f

Philadelphia Office

600 Arch Street

Suite 9400

215-597-7200p

215-587-0406f

Pittsburgh Office

1000 Liberty Ave.

Suite 2031

412-644-3400p

412-644-4871f

Scranton Office

310 Spruce Street

Suite 201

570-346-2006p

570-346-8499f

THE COLUMBIA SHUTTLE MEMORIAL

On February 4, I joined President Bush in attending the memorial service for the astronauts in Houston and it was a very moving affair. There was hardly a dry eye in the entire crowd and I think this is sort of a reflection of the tension which is in America today. I got a call in my office from a woman who lost a son in Afghanistan, asking why there wasn't

more attention paid to his sacrifice. Not denying the astronauts their memorial, I think that it sort of coalesced with the service for the astronauts on Americans who have died in Afghanistan or in Kuwait or really all around the world. It is a very fitting tribute to the astronauts which we had in Houston in February.

